Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of Verizon for Forbearance from The Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules	)	CC Docket No. 96-149

REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA),[1] through the undersigned and pursuant to the *Public Notice* released by the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (WCB)[2] and pursuant to sections 1.415 and 1.419 of the Commission's rules,[3] hereby submits its reply comments on the Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules (Petition). In these comments, USTA responds to comments filed by other interested parties. USTA also continues to urge the Commission to rescind its operating, installation, and maintenance (OIM) rules,[4] but if the Commission does not agree to do so, USTA urges the Commission to forbear from requiring compliance with its OIM rules.

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[1] USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.
[2] *Public Notice*, CC Docket No. 96-149, DA 02-1989 (rel. Aug. 9, 2002) soliciting comment on the Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules.
[3] 47 C.F.R. §§1.415 and 1.419.
[4] *See* 47 C.R.F. §§53.203(a)(2) and (3).

DISCUSSION

As USTA maintained in its comments, the Telecommunications Act of 1996 (1996 Act) does not mandate the Commission's implementation of its rules prohibiting the sharing of OIM services between a Bell operating company (BOC) and its Section 272 separate long distance affiliate.[5] Contrary to the claims of Sprint in its comments,[6] Section 272(b) of the 1996 Act, which sets forth the structural and transactional requirements of Section 272 affiliates, does not identify any limitations on OIM sharing between BOCs and their affiliates. Congress certainly knew how to include such limitations because it did so in Section 274(b) of the 1996 Act, which sets forth the structural and transactional requirements for the relationship between BOCs and their electronic publishing affiliates regarding the provision of electronic publishing by these affiliated companies. Specifically in this regard, Section 274(b)(7) prohibits BOCs from "hiring or training of personnel on behalf of a separated affiliate" and prohibits BOCs from "purchasing, installation, or maintenance of equipment on behalf of a separated affiliate."[7] As BellSouth noted in its comments, "had Congress intended to prohibit the sharing of these services [referring to sharing of OIM services between BOCs and their Section 272 affiliates], it would have expressly stated so as it did in Section 274."[8] As BellSouth further noted with regard to what Section 272 actually prohibits, "in the absence of an express prohibition against the sharing of OI&M services, there is a statutory presumption that such activities are permissible."[9] There is no express prohibition against the sharing of OIM services in Section 272; therefore, such sharing is permissible and the Commission is not statutorily prohibited from eliminating its OIM rules. For these reasons, and as advocated in its comments, USTA urges the Commission to

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[5] *See* USTA Comments at 1-2.
[6] *See* Sprint Comments at 2-3.
[7] *See* 47 U.S.C. §274(b)(7).
[8] BellSouth Comments at 2.
[9] *Id*.

rescind its OIM rules. If the Commission does not rescind these rules, USTA urges the Commission to forbear from requiring compliance with these rules.

With regard to the requested forbearance, certain commenters argue that any removal of the Commission's OIM rules would create greater opportunity for cost misallocation.[10] In particular, Sprint claims that even under a price-cap regime a BOC can exploit its dominance in the local market to subsidize its entry into the long distance market.[11] This is simply not true. As SBC aptly noted in its comments, "in today's more competitive pure price caps environment, BOCs' local and access rates are capped, thereby denying them *any* ability to engage in cross subsidization."[12] USTA agrees with SBC that under a price-cap regime BOCs have no ability to manipulate prices, by inserting costs, in an attempt to engage in cross subsidization because their prices are set by formula. Any changes to those prices, such as inclusion of exogenous costs, must be approved by the Commission. There is no evidence that removal of the OIM rules could or would result in cost misallocation by BOCs.

Certain commenters attempt to downplay Verizon's claim that the OIM rules prevent it and other BOCs and their long distance affiliates from providing integrated, end-to-end local and long distance services by arguing that other long distance companies are in the same position as Verizon's long distance affiliates.[13] Yet, these arguments fail to address the reality that many long distance companies, particularly large long distance companies like Sprint, WorldCom, and AT&T, have competitive local exchange carrier (CLEC) affiliates and together these long distance and CLEC companies offer integrated, end-to-end local and long distance services over their own facilities or over facilities they lease. Unlike the BOCs and their long distance

[10] *See* Sprint Comments at 8-11, WorldCom Comments at 5-6, and AT&T Comments at 2, 9-12.
[11] *See* Sprint Comments at 10.
[12] *See* SBC Comments at 6 (emphasis in original).
[13] *See* Sprint Comments at 18, WorldCom Comments at 8, and AT&T Comments at 5-6.

affiliates, these other long distance companies and their affiliated CLECs are only limited in their ability to offer seamless, integrated local and long distance services by their ability to win customers for both of those services. More importantly, these commenters have focused too narrowly on a comparison of BOCs and their affiliated long distance companies with their wireline competitors (*i.e.*, wireline long distance companies and CLECs). The fact is that BOCs and their long distance affiliates face stiff competition from wireless carriers, which are not limited in their ability to offer seamless, integrated local and long services. The competitive market for integrated local and long distance services is simply much larger than those service offered by BOCs, their long distance affiliates, and their wireline competitors.

Lastly, one commenter maintains that the forbearance Verizon seeks is subject to Section 10(d) of the Communications Act (Act) because Section 272 relates to services for which a BOC must obtain authorization under Section 271(d)(3), noting that the "Commission may not forbear from applying the requirements of Section 271 'until it determines that those requirements have been fully implemented.'"[14] This is simply a blatant misrepresentation of the Act. Section 10(d) states, "except as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented."[15] Congress could have limited the Commission's ability to forbear from the requirements of Section 272 by including Section 272 in the limitations of Section 10(d), but it did not. The Commission's decision of whether or not to forbear from requiring the OIM rules, which it interpreted as being necessary pursuant to Section 272(b), should not made pursuant to the limitations of Section 10(d), rather it should be based on the requirements of Section 10(a).

[14] *See* WorldCom Comments at 1.
[15] 47 U.S.C. §160(d).

If the Commission determines that it must proceed with a forbearance analysis rather than simply rescind its OIM rules, USTA urges the Commission to find that the OIM rules are not necessary to prevent discrimination; that they are not necessary to protect consumers; and that these findings support a further finding that forbearance would be in the public interest. As stated in its comments, USTA noted that several provisions in the Act,[16] including many that will survive any sunset of Section 272, prohibit discrimination. In addition, the continued enforcement of Section 272(b)(2) imposes duplicative costs on BOCs and their long distance affiliates, resulting in higher costs to consumers, which hurts consumers rather than helps them. Finally, the continued enforcement of Section 272(b)(2) unnecessarily limits the ability of BOCs and their long distance affiliates to compete with wireline and wireless competitors in offering seamless, integrated, end-to-end local and long distance services. For these reasons, USTA urges the Commission to grant Verizon's forbearance petition.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: Robin E. Tuttle

Lawrence E. Sarjeant
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7300

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[16] *See* 47 C.F.R. §§272(b)(2)-(5), 272(e)(3), 202, and 251.